

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DENNIS NEAL CLARK, )  
Petitioner )  
vs. ) No. CIV-05-1285-C  
STATE OF OKLAHOMA and the )  
ATTORNEY GENERAL OF THE )  
STATE OF OKLAHOMA, )  
Respondents )

## ORDER ADOPTING REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach entered a Report and Recommendation on December 30, 2005, recommending dismissal on grounds of timeliness. Petitioner has timely objected. The Court therefore considers the matter de novo.

The facts and relevant law are fairly and accurately stated in the Report and Recommendation and need not be repeated here. In his objection, Petitioner merely argues the evidence, apparently in support of his argument that he was impeded by the State from timely filing this petition because he could not get the evidence he sought. This argument has been foreclosed by the Tenth Circuit. Weibley v. Kaiser, 50 Fed. Appx. 399, 402 (10th

Cir. 2002). There is simply nothing asserted in the objection filed by Petitioner which would permit any result other than that recommended by Judge Bacharach.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons announced therein, this petition for habeas corpus relief is DISMISSED as untimely. Because no amendment can cure the defect, this dismissal acts as an adjudication on the merits, and a judgment will enter.

IT IS SO ORDERED this 10th day of January, 2006.



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ROBIN J. CAUTHRON  
United States District Judge